RESPONSE TO THE LAW AND JUSTICE EVALUATION ISSUES PAPER (2010) IN REGARD TO AUSTRALIAN AID

Introduction

This submission answers questions in the Law and Justice Evaluation Issues Paper (November 2010) which one assumes were based on earlier questions in the Law and Justice Concept Note (October 2010). However, answering most of the questions in either paper assumes one has a detailed knowledge of the comparative aims, management and outcomes of Australian law and justice aid projects. One wonders who has this knowledge and if the 'stakeholders' at the Inception Workshop which produced the Concept Note did.

One also wonders who the 'stakeholders' were because all people everywhere have a stake in the more effective global management of law and justice assistance. From many global perspectives, for example, the rate of destruction of forests appears destined to mean the loss of many endangered species to future generations everywhere. The '***key*** *stakeholders*' are ideally distinguished first in any policy discussion because they are the people for whom the specified system was devised and who paid for it. Other stakeholders in the system are often service providers, many powerful, pursuing different vested interests.

The aims of investment are seldom discussed by those representing financial and legal interests as their controlling paradigm assumes the only aim of investing money is making more. From broader community perspectives than those of stockholders or real fund controllers, and also from the perspective of a family, money is ideally amassed and invested to meet many social and environmental goals better. The role of government is to collectively represent the interests of the people, which are also social and environmental as well as economic. These paradigm differences must be faced or confusion about how to reduce carbon pollution and achieve sustainable development will reign and it will fail.

In the legal paradigm, the words 'just' and 'justice' are different from 'fair', and synonymous with access to courts (Commonwealth Attorney General's Dept., 2002, p.195), as if the lawyers' monopoly and their adversarial methods entail perfection. This pre-scientific approach is contrasted with more recent, holistic, scientific and democratic approaches to dispute resolution, which may be called Alternative Dispute Resolution (ADR), which have been championed by some politicians and others. The recommended direction is discussed in answers to questions below and in the attached discussions:

1. O Mein Papa: Submission to the Independent Review of Aid Effectiveness

2. A Healthier Approach to Justice and Environment Development in Australian Communities and Beyond (published in Public Administration Today, No.9, 2006)

3. Submission responding to the Council of Australian Government's (COAG) National Legal Profession Reform Taskforce Consultation Report (2010).

What are the goals and assumptions which underpin Australian law and justice assistance and how well do they link to broader national and development objectives?

I have no idea of the goals underpinning Australian law and justice assistance projects because such information does not appear to have been made clearly available, at least to members of the Australian public like me. The Law and Justice Evaluation Issues Paper (2010) states 'law and justice assistance traditionally has a fairly poor record on monitoring and evaluation'. In order to monitor and evaluate how money has been spent, one first has to know exactly what it has been spent on. One therefore must first know the aid aims and exactly how the $300 million Australians paid out in law and justice aid in 2008-2009 was spent, if one wishes to evaluate the outcome of expenditure. If those who gave or took money have no clear idea what it was given for or spent on, they should naturally be asked to bring about open and clear accountabilities for management in future. This is the common sense requirement of good administrative practice.

Because they traditionally assume a God given right to rule, legally related expenditures often remain unaccountable to those who are traditionally considered as subject people, not as citizens and taxpayers in modern communities to whom law and justice service providers are ideally held accountable more scientifically and democratically, so all can progress together better. This submission therefore agrees with the position of the UK White Paper on Development, at least as stated by the Law and Justice Evaluation Issues Paper (2010). This position supposedly is that the UK will treat security and access to justice as a basic service, on a par with education. One wonders how else such services could logically be seen, - as a gift from God, a lord or queen? One wonders if and how the stated UK perspective will affect their courts, which historically have driven us.

From a perspective which sees the provision of law and justice as services to different communities which may often be linked, one also assumes that law and justice services, however broadly or narrowly defined, are in the current case properly viewed as part of aid provision. The assessment of the Office of Development Effectiveness (ODE 2010) is that aid program objectives are often unclear and that new approaches to delivering aid are insufficiently understood. I guess this is particularly true of law and justice services because they are traditionally ruled by courts which wrongly continue to protect their ancient feudal privileges. This problem is discussed later before offering better direction.

The summary of ODE key findings states that many aid program objectives do not adequately clarify or link the development outcomes and reforms being pursued in a partner country to the role Australian aid supposedly plays in support of these goals. The ODE states that policy dialogue between Australia and its partners on the priorities and strategies for effective development in future needs to be robust, broad and frequent. It points out that a clear and coordinated whole-of-government strategy is required for Australia to engage effectively at the country or regional level and that the choice of approach to aid program implementation must fit the context and be based on a balanced assessment of risk. It also states there is a need for the Australian aid program to work on continuously improving its performance management system and to ensure that the results

of performance monitoring influence decision making. One can only agree and wonder where one would start with Australian lawyers as this latter idea would be new to most. Since they are so used to being on top, would they continue on as before? I think so.

The concept of justice simply means 'fairness' in popular parlance. The concepts and administration of 'law and justice' delivery should be above the lawyer's practice and relate to the progress of humanity, as the production of clear and more open communication, education and research services are expected to do. In Australia, however, 'law and justice' are defined too narrowly in laws and all related court, bureaucratic and professional practice to be useful for gaining clearer national, regional or related group or individual direction. They are key problems for Australian governance.

The Attorney General's Department (2003) states that access to justice can only ever mean relatively equitable access to the legal process. Even the common dictionary reflects this legally driven confusion between the broadly modern concept of justice as fairness, and its earlier, feudally driven administrative reality in courts. It defines '***justice***' as: *Quality of being just; fairness; judicial proceedings; judge; magistrate.* In Australia, the Constitutional legitimacy of feudal court practice and ancient legal custom dominates all other practice. Huge quantities of narrowly constructed, outdated and often conflicting laws which may be unknown to all but specialist lawyers, dictate legal action. Each law and its related legal practice is blinkered by its narrowly feudal and adversarial past practice, rather than being capable of delivering the more scientific and democratic processes which ideally drive us all in any environment, whether or not we are also driven by subjection to a God who is assumed to be the Embodiment of love as well as justice.

Australian courts and lawyers appear still to be treated as the scientifically and financially unaccountable embodiment of feudal power. This occurs partly because the Constitution appears to stand for a Supra-natural Power, which takes a pre-scientific approach to all development. How else can the supreme authority of Its word over all other law made by the contemporary community or future generations be explained? This is an authoritarian rather than scientific or democratic approach. History suggests each generation is more informed than the last and ideally should correct past mistakes in the light of new knowledge and experience. This is not possible under the Constitution, which keeps Australia looking backwards and elevates courts and the lawyers' pre-scientific discourse.

For example, many laws contain no clear aims (sometimes called 'objects' in law). However, clear aims and clear definitions which people can use to define and compare practice and evaluate the outcomes are important for good administration and research. Laws usually include interpretations instead of definitions. This predates the 18th century Enlightenment and the common dictionary definitions which are vital for democratic and related scientific understanding, classification and practice. Good outcomes, rather than uniform practice are what matters for good practice, whether these outcomes are expected to be guaranteed (as in bridge building safety) or can only be desired (as in better mental health). Law is not rocket science however much lawyers may pretend. If one must get a lawyer to understand the law it is a lawyers' tool rather than a democratic aid or product.

The lack of comparative information about types of dispute, their treatment, and their outcomes is typical of legal practice and unfavourably compares with health and other community service provision. The health practitioner gathers evidence of apparent problems, records a diagnosis and implements recommended treatment. Ideally this may be varied as the practitioner considers necessary in the light of all relevant evidence about the particular case or situation. Ideally, data recording is designed, both nationally and locally, to drive improvements in the quality of all treatment outcomes and to prevent re-injury. Record of typical and atypical patient situations, treatments and outcomes, ideally provides a broad data pool in which diverse situations and practices can also be studied, in order to improve all future activity. Law instead involves many feudal comparatively pre-scientific and authoritarian administrative practices which collect little or no data to assist injury prevention, rehabilitation, premium setting or other cost containment.

'Privilege' is a concept commonly used in law to justify the denial of information and which is considered to outweigh the alternative benefit of having all information available to facilitate a fair process of judgment. The central assumption of the legal profession apparently is that the lawyer should rightfully conceal or mould what his client knows is true, in order to maximise his interest in revenge or escape from any guilty judgment and its results. In legal and related financial minds ignorance is often also seen as the prerequisite for properly objective impartiality. For example, Garnaut's interim report on climate change warned about carbon price setting and the related trade of carbon permits:

> Care would need to be given to the design of the institutional arrangements for administering the allocation and use of permits. Variation in the number of permits on issue or the price would have huge implications for the distribution of income, and so could be expected to be the subject of pressure on Government. There is a strong case for establishing an independent authority to issue and to monitor the use of permits, with powers to investigate and respond to non-compliance '(2007, p.65).

Such views appear irresponsible because government is elected to govern and by giving away its power to a body established at arm's length from itself, it can only make itself more ignorant and unaccountable than it would otherwise have been. The idea that establishing fund management bodies at arms length from an original body will guarantee objective management is particularly misguided if the appointed trustees have secret relationships and drivers of their own, as usual. Openness is the necessary driving force for democratic and scientific approaches to administration and to resolving problems.

Pre-scientific, anti-democratic assumptions and expectations of legal and financial practice led to the recent global financial crisis and continue to drive the work of many public servants, professionals and others connected to the courts. They also drive the ancient adversarial process, which is conducted as a fair fight according to feudal rules, rather than as an open inquiry where ideally the attempt is made by all involved to value evidence about a matter openly, honestly and broadly, rather than partially, secretively and narrowly according to the legal dictate. Duelling lawyers and those they call to the box would lose their supreme status, money and their comparative lack of any accountability if legal

provision were treated as a service to the community and the principles of quality management, which depend on a scientific approach ideally conducted with a broader understanding of the self and others, were applied. The legal business thrives on complexity while also claiming this is outside the lawyers' doing and control. There is little point setting up quality management systems under courts as lawyers rule and destroy them quickly by their constant reference back to courts. (Is this stupid, nasty or gutless?)

Today the concepts of law and justice ideally should relate to the upkeep and advancement of community and individual standards which are in turn ideally related to specified qualities of production, service provision, choice and life, which ideally apply to all and which are based on the United Nations (UN) Declaration of Human Rights, implemented by the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights and related instruments such as the Rio Declaration on Environment. The Independent Review of Aid Effectiveness does not appear to recognize that the objective of the Australian aid program appear ideally related to achievement of UN Millennium Development Goals and targets for poverty reduction. (See the attached discussion of aid).

Monetary compensation for an injury which has supposedly been received at the hands of another has traditionally been delivered in court. In the traditional legal mind money is the only form of rehabilitation, delivered only after years in court and after lawyers take a cut. However, the concepts of disability and rehabilitation are ideally treated more broadly. For example, in 1994 the UN defined the concept of community-based rehabilitation as:

> A strategy within community development for the rehabilitation (CBR), equalization of opportunities and social integration of all people with disabilities. CBR is implemented through the combined efforts of disabled people themselves, their families and communities, and the appropriate health, education, vocational and social services (UN Social Development Division 2001: 1).

The UN has also defined restorative justice as any process in which victims, offenders and other stakeholders participate actively in the resolution of matters arising from crime, often with the help of a fair and impartial third party. The related Australian concept of alternative dispute resolution (ADR) is discussed later and further in the attached.

A submission is also attached responding to the Council of Australian Government (COAG) report entitled National Legal Profession Reform Taskforce Consultation Report (2010). It argues an Australian administrative design to obtain and to question *national standards* (**not** *national legal practice uniformity*) is required to promote fair competition by service providers and other producers. Government ideally should try to ensure the national community and related individual social, environmental and economic protection and enhancement aims are met or improved upon fairly and cost-effectively, in partnership with industry and related communities. Public, private or non-profit service providers ideally are treated equally unless something else seems in the public interest. The submission therefore answers Taskforce questions on professional indemnity insurance, fidelity fund cover, continuing professional development requirements, and disclosure and charge of legal costs, in related international, national and regional development contexts.

Better coordinated approaches to industry and community risk and fund management to reduce legal cost and improve program or project administration are recommended. More supportive, protective, rehabilitative, fairer, cheaper and more competitive management and investment outcomes may be expected from individual, organizational, industry and community choice of management, saving and investment directions which broadly operate consistently with definitions and investment directions in the Superannuation Industry (Supervision) (SIS 1993) Act. Consideration of proposals of the review into Australia's superannuation system (2010) is recommended. The appropriate management of all trust money and accounts is naturally also considered in related national and regional contexts. Government should pursue COAG aims by treating all dispute resolution and related activity as nationally funded services and abolish lawyers' practicing certificates.

In general, the draft Legal Profession National Law and related directions cannot promote international competitiveness because there is no way to achieve or measure the key Objective of the Law, which is *to establish an efficient and effective Australian legal profession*. This goal is only achieved by treating all dispute resolution consistently as service, to evaluate its related products and outcomes. This direction would be better than more pro bono work because it would not encourage the feudal tradition of 'noblesse oblige' where a few in the community are expected to be grateful for being given gifts at the expense of others who are increasingly prevented from action, confused, kept in the dark, frightened, slowed up, financially exploited and tricked by those controlling them.

This is the international context in which the Productivity Commission (PC) Issues Paper 'Contribution of the Not for Profit Sector' also seeks measurement and comparison of a non-profit organization's capacity to meet the goals of ***service delivery, advocacy, connecting the community and enhancing the community endowment.*** A learning culture is also needed to support innovation. The explosion of information technology should make it easier than ever before for education and entertainment content to be disseminated through a wide variety of media and utilized quickly in related skills and industries or in community development and enjoyment. There is now a greater need and potential than ever for the rational development of open education content suitable for delivery via the Internet, TV, videos, radio, books, etc. Open and freely available teaching and workplace based supervision to assist in the development and assessment of competencies should be within the reach of many, not just prop up comparatively narrow and dysfunctional disciplines supporting wealthy elites. Knowledge is different to other forms of production as its value to communities multiplies through its creation, spread and use, rather than the product being used up or the production destroying the 'global commons' for private gain, as traditionally occurs in agriculture, mining or manufacturing.

How are the goals and assumptions of law and justice assistance different in countries affected by conflict and fragility?

The assumptions of law and justice assistance in any country will vary depending upon the geography of the region and its history, both in institutional and popular form. The assumptions also vary according to the economic, political, cultural and religious circumstances and related communications of the various communities, families, groups and individuals making up the national whole and its supporting or dominating institutions. Goals are normally set by conscious or unconscious reproduction of past ideas and practice and under newer influences from outside the particular community.

The populations in countries affected by conflict and fragility are comparatively likely to be poorer and more influenced by more strongly held and feudally related loyalties, traditions and expectations than is normal in wealthier communities with many more broadly scientific and more openly democratic traditions and expectations.

Are the objectives and approaches coherent across different whole-of-government partners? What development outcomes have been achieved in the case study countries? How have law and justice programs contributed to cross-cutting objectives like gender equity, environmental protection and disability inclusive development? Etc, etc, etc.

It is pointless to be asked the above and many similar questions, if one has no idea what the law and justice projects are and what their aims were. Who has this information and can therefore answer the questions in the Law and Justice Evaluation Issues Paper?

Even if up to one's elbows in one or more Law and Justice Projects, this hardly allows one to generalize about anything outside one's particular experience, which may be atypical as it has naturally been bound by one's particular environment. The individual so placed

would find it impossible to answer most of the questions in the Law and Justice Evaluation Issues Paper, because these assume broader knowledge which one guesses that no respondent has. Lawyers appear unaware that logically one cannot move from particular knowledge to the general rule with any confidence. They appear to think that acting locally also puts them in a position to act nationally and presumably globally. Because lawyers generally lack an administrative practice which allows them to speak with more scientific and popular authority, they prefer the endlessly theoretical realm to testing judgment in regard to the outcomes of practice upon the individual or community.

The way forward to a quality management approach to work, service and related environments consistent with many scientific, democratic and religious aspirations

The attached submission to the Independent Review of Aid Effectiveness explains the process of quality management which is also necessary for the future organizational structure of aid and related programs and projects. It requires:

1. Consultative development of clear program and related project aims and objectives (with or without numerical targets)
2. Clear strategies to achieve the program aims and the related project objectives
3. The provision of the budgets necessary to undertake the program and its project/s
4. Monitoring of project performance and evaluation of the outcomes
5. Clear accountabilities for aid program and project management and expenditure

The submission points out one cannot evaluate the outcomes of expenditure against the aims of its provision in the absence of clear and reliable information about what the aid money was spent on. The review does not appear to recognize that the objectives of the Australian aid program appear ideally related to achievement of UN Millennium Development Goals and targets for poverty reduction. Neither the Independent Review of Aid Effectiveness nor the AusAID Office of Development Effectiveness bothers to define what they mean by 'effectiveness' and 'efficiency'. This is naturally a worry.

Good governance normally requires separation of policy from its administration, with the former driving competitive, transparent, service provision (Rich, 1989; Hilmer, 1993) so all may identify a range of economic, social and environment related outcomes. Program budgeting, as partially implemented in the public service by Wilenski (1982; 1986) and others, is central to this approach. Managers ideally start with program or related project ***aims*** which have been consultatively developed (and which may or may not also involve numerical ***targets***); establish ***strategies*** to meet these aims and prepare related ***budgets***. Activities are ***monitored*** and ***outcomes*** measured in the light of aims.

The charge is made that financial and legal interests and 'efficient market theory' in which price ideally drives all, have led away from their supposedly key goals of perfectly informed and perfectly clearing markets. Their old paradigm protects secret operations, not the transparency which would assist comparison of producer efforts in the consumer, investor and public interest. A related submission on the PC draft research report on Bilateral and Regional Trade Agreements (2010) accordingly argued the ideal aims of

trade should be to improve the quality of life for current and future generations. This depends on the quality of the social and natural environment, as well as on increased economic gain and its distribution. Planned protection of many endangered species where habitat is rapidly being destroyed is logically first addressed globally and regionally in the interests of current and future generations. Welfare of the poor is ideally addressed in related rural and urban contexts where the quality of land, water and air is also improved in pursuit of cleaner energy and other production. Better management of heritage, housing, communication, reproduction, education, illness, disability and death are key considerations in international and regional contexts which are ideally linked.

The Office of Fair Trading Home Building Contract provides a good approach to contracts, which must be clear and filled in properly for quality management. The people who originally called for the contract must ensure it also clearly reflects what they wanted most. If additional minutes or other documents have to be signed again and added to the contract to achieve it, this is an extra confusing waste of time. Clause 11 of the contract is the ***prime cost items schedule***. When filled in it should clearly display the required inputs and amounts related to the specified step by step achievement of the key conditions which originally led to the contract agreement and its expected production outcomes. Clause 12 provides the ***progress payments schedule*** which is also related to the staged and approved completion of the expected work. The ***schedule for inspections*** should ideally provide for the proper sign-off of the quality of work, the resulting periodic payment and ideally may also provide accreditation for skills development on the job.

If the contract is not clear and also clearly fulfilled, quality management has broken down and the contract normally rules. The ***prime cost items schedule*** is an ideal reference for the nominated project manager to use for project management purposes and also to post on site, so that everybody who lives or arrives there has a reasonable idea of what is expected to go on and when, as well as how to contact the project manager. The ***prime cost items schedule*** may be compared with a recipe (a common household form of quality management). It provides a list of key inputs (material and human steps designed to satisfy the contracting parties). Work approval, payment, mediation and related quality management concerns are ideally handled in related industry and government contexts.

The attached article entitled ‘A healthier approach to justice and environment development in Australian communities and beyond’, published in Public Administration Today (9, 2006) shows that health and environment development are now ideally at the centre of a new international governance paradigm which also raises risk management to new importance. Implementation of this paradigm requires broad administrative reform in Australia and beyond to meet the evidentiary requirements of scientific and quality management. Recommendations for the development of alternative dispute resolution systems (ADR) are made in this context. Supporting communication, education and research into the comparative role and effectiveness of ADR and courts are also required.

While one is happy for engineers and surgeons to be certified to practice by their expert fellows, as bridges or bodies might otherwise collapse and we might die, if all lawyers died peacefully in their sleep tomorrow, Australia could more easily, quickly and cheaply become a far better place from all more logical, scientific, democratic and cost-cutting

perspectives. The rest of us have far more relevant guiding knowledge and practice for designing law and its aims, key definitions and practice, and for dealing effectively with disputes and apparent legal breaches in the modern world, so as to improve it, than lawyers have. This is a hypothesis. To test it, ADR systems must compete with courts on equal terms, not constantly be under lawyers' control so that they are always dragged backwards.

The hypothesis is all communities need non-adversarial dispute resolution methods aimed at harm prevention, with punishment and rehabilitation conceptualised in this context. The National Alternative Dispute Resolution Advisory Council (NADRAC 2004) defined ADR as 'a process, other than judicial determination, in which an impartial person (an ADR practitioner) assists those in dispute to resolve issues between them'. Mediation, conciliation and arbitration may be seen as linked and ascending steps in an approved practitioner's degree of power to judge matters and people on the basis of all apparently relevant evidence about the major issues of concern to the key stakeholders and others.

Chief Justice Spigelman suggests the UN Commission on International Trade Law (UNCITRAL) Model Law should be adopted as the Australian arbitration law and it certainly seems clear so far. He stated it is a workable regime and if it were adopted as the domestic Australian arbitration law it would send a clear message to the international arbitration community that Australia is serious about a role as the centre for international arbitration. He stated Australian competitors, such as Hong Kong or Singapore do not create a rigid barrier between their domestic and international arbitration systems and that neither should we. The Chief Justice also stated that 'The focus on commercial arbitration as a form of commercial dispute resolution has always offered, but rarely delivered, a more cost effective model of resolution of disputes'. Doug Jones, of the Australian Centre for International Commercial Arbitration, has also commented that arbitration is still:

> ……..expensive and hugely inefficient, forcing many companies to prefer expert determination – due to a combination of arbitrators failing to insist on processes different to courts, and lawyers…….continuing to insist on intricate pleadings, excessive discovery and prolonged hearings. We need reform to distinguish arbitration from court processes.
> (NSW Attorney General's Dept. 2010)

The above situation is the natural outcome of ADR being captured by state registered lawyers, who pursue their own monopoly interests, rather than the interests of the people undergoing ADR or those of the broader Australian community. Mediation, conciliation and arbitration are addressed inconsistently in Australian legislation which always drives them back to courts. Opposing lawyers drive the collection and consideration of evidence about a matter strictly, according to fixed legal and adversarial principles, presided over by a comparatively passive judge. This is normally expected to occur in isolation from knowledge of earlier or related attempts at conflict resolution, where it is likely that those in dispute had no access to key information considered 'privileged'. The court appears to equate such comparative ignorance with lack of bias, which may seem strange to many.

A Canadian report presented to the NSW Attorney General's Department suggested three basic strategies. They are:

1. Do away with pleadings and replace them with 'dispute summary and resolution plans'
2. Introduce case management conferences, presided over by a judge, where the plan is discussed and directions are issued
3. Hold a trial management conference 15-30 days before the hearing.

Anybody familiar with the discipline of writing an academic argument must surely be amazed at the pre-scientific court practice of constantly wandering legal talk, which often does not appear to be particularly useful for any sensible case, but which is nevertheless captured and recorded ad nauseam. Is this ever read? Compared with how PC inquiry normally proceeds, this expensive verbal diarrhoea appears to be a major example of legal incompetence and an incredible waste of time and money. The PC writes its own paper on a matter of inquiry, asks stakeholders for their written or verbal views on the matter, and then writes a report with recommendations. As an intellectual practice this is good in being comparatively democratic, open, accountable and cost-effective. However, few academics gear their research interests free to a process giving them no brownie points.

In order to develop effective ADR training or accreditation, key stakeholders in the most clearly relevant communities must be consulted first. Their members enter into dispute, and therefore are those most likely to be prepared to pay for any supporting process of dispute resolution, related training or accreditation. ADR practitioners may be broadly conceptualised as those who the key stakeholders in a relevant industry or community environment entrust to undertake an informed and effective search for evidence, to resolve disputes and record outcomes, so as to prevent environmental problems, of which future disputes may be symptomatic. The legitimacy of judgments seems likely to be strengthened when those judging are empowered by more immediate communities, as well as by broader governments, which some may see as remote or threatening to their interest.

From the above perspective, the ADR practitioner's qualifications for the role should primarily reflect the knowledge requirements of the general community and the stakeholders in the environment most relevant to resolution of the questions in dispute. For example, construction appears likely to be the best training ground for all ADR practitioners working in the construction industry, but good analytical, verbal and written communication ability is a vital part of the role as well as industry and related technical knowledge. If this is so, then industry and community key stakeholders should identify, train and/or approve a range of ADR practitioners who may or may not have other relevant qualifications. Such issues require further consideration and research. Essential differences between the ideal aims and practices of courts and lawyers, in comparison to those of ADR practitioners, should also be conceptualised in this context, before comparing the apparent value of their outcomes.

Lawyers usually bill for work on the basis of how many hours it supposedly took to do. There is little or no systematic information in any reports on justice, about the social

problems dealt with. This lack of comparative information about types of dispute, their treatment, and their outcomes is typical of legal practice and can again be unfavourably compared with the situation in health care. The Legal Fees Review Panel (2004) discussed task-based legal billing favourably. This is defined as reporting the cost of legal services by tasks, using billable codes to describe them. Ideally, the lawyer provides a budget in advance of performing work and may not exceed the budget without prior agreement. This form of billing appears to be more consistent with Medicare expectations and with the Casemix (diagnostically related group) funding model that ideally plays a vital part of the identification of quality and value in health and community service provision.

A carbon price, a carbon or other production tax, a carbon or other risk premium or superannuation savings designed primarily for retirement purposes may all amass funds that may be pooled in a bank or related financial institution and invested. In terms of achieving social, environmental and economic goals, what appears to matter most is to have confidence for good reason in clearly stated directions for any fund investment and in all related management accountability. In his article 'High price of death on Wall Street' in the Australian Financial Review, Geoff Winestock claims Reserve Bank of Australia governor, Glenn Stevens has suggested banks adopt the role of 'handmaidens to industry' engaging in the basic functions of facilitating payments, taking in deposits, pooling money and lending it out (AFR 15.9.10, p.1). This also seems likely to produce more realistic and consistent estimates of value, not increasing cycles of economic boom and crash which naturally destroy confidence in the market and those we increasingly think of as liars.

Global warming is a risk of production. Its costs are borne by broader communities and especially by those who face calamity as a result of it in future. Producers face many risks, including their main risk of business failure and the risk of actual or alleged harm to workers, clients or communities associated with the use of their products or services or with a related practice or environment. Risks are often better managed collectively rather than individually. This is the key insurance management principle. In Australian health insurance systems, production risks are ideally met by setting a premium level which is based on related injury rehabilitation and injury prevention requirements. The ideal logic of risk management and insurance is that all the relevant classes of people ideally bear the cost of the risks they each create, either collectively or as individuals, rather than passing these costs on to bystanders or future generations. It is possible to develop an effective insurance scheme with pay as you go insurance rather than full funding of claims. This is not recommended as costs may soon be shifted to future generations.

The ideal carbon price, when first set, is cost neutral for producers and communities. Its scientific form of estimation and related fund management ideally increases business stability, the potential for continuing scientific management and for more effective competition to achieve all government, industry and related community goals. The initial source of funds for an emissions trading scheme might ideally be taken from outdated government or industry funds and re-directed into new funding pools for more sustainable development. This is ideally the same process for the necessary deregulation of earlier, dysfunctional legislation and funds, to gain more sustainable development across the national or international board. The speed of transfer influences new fund amounts.

As a result of its more scientific focus on the comparative costs of environmental damage prevention and rehabilitation activity, the premium structure and related fund management processes are ideally designed to replace many outdated fund management and investment principles based on greater community and market ignorance. The proposed premium and investment method seeks to assist competition to be planned more effectively to produce economic, social and environmental results which are more easily identifiable than in the past. Full premium funding, while desirable, is not considered necessary for basic risk management and insurance principles to work effectively.

Thank you for the opportunity to make this submission,
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